IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WA. No. 403 of 2007

AGAINST THE ORDER IN WPC.4348/2007 Dated 08/02/2007
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APPELLANTS:PETITIONERS 1 AND 2
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1. M.A. KRISHNANUNNY, PRESIDENT,
   COCHIN DEVASWOM BOARD, TRICHUR
2. A.C. VELAYUDHAN, MEMBER
   COCHIN DEVASWOM BOARD, TRICHUR

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.V.PREMCHAND

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA REP. BY ITS CHIEF SECRETARY TO
   GOVERNMENT OF KERALA, TRIVANDRUM
2. PRINCIPAL SECRETARY TO GOVERNMENT
   (DEVASWOM), GOVERNMENT OF KERALA
   TRIVANDRUM

BY ADVOCATE GENERAL SRI C.P. SUDHAKARA PRASAD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20/02/2007,
THE COURT ON 26/02/2007 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN, Ag. C. J. & M.N.KRISHNAN, J.

Writ Appeal No 403 of 2007

Dated: 26th Febuary, 2007.

JUDGMENT

Radhakrishnan, Ag.C.J.

This writ appeal is filed against the interim order dated 8.2.2007 passed by the learned single judge in W.P.C. No 4348 of 2007. Writ petition was preferred by the appellant seeking a declaration that Ext.P2 Ordinance is unconstitutional and against the provisions of the Act and unenforceable and also for an interim direction to allow the appellants to continue as the President and Members of the Cochin Devaswom Board pending disposal of the writ petition. Learned single judge dismissed the prayer for interim relief against which this writ appeal has been preferred.

2. Sri T.P. Kelu Nambiar, Senior Advocate appearing for the appellants submits that appellants are nominated as per the provisions contained in Section 63 of the Travancore-Cochin Hindu Religious Institutions Act, 1950 and therefore are entitled to continue for the full term of four years. Section 70 of the Act states that every member of the

Board shall be entitled to hold office for a period of four years from the date of his nomination or election, as the case may be. Counsel submitted that there is no justification in reducing the term of office of the appellants which is of a permanent character with a fixed tenure. In support of the contention, counsel placed reliance on the decision of a Division Bench of this court in Justice K.K. Narendran v. State of Kerala (1994 (2) K.L.T 1004).

3. Learned Advocate General however appeared and contended that the Ordinance was validly promulgated and the term of the office has been statutorily fixed as two years and therefore appellants ceased to be in office on completion of two years. Learned Advocate General also made reference to the decision of the apex court in State of Himachal Pradesh and another v. Kailash Chand Mahajan and others (1992 Supp. (2) S.C.C 351). Reference was also made to another decision of the apex court in Sri Justice S.K. Ray v. State of Orissa and others (2003) 4 S.C.C. 21) and submitted that even in the case of tenure appointments, if the post itself is abolished persons are not entitled to continue.

4. Writ petitioners challenge the the various provisions in the Ordinance which call for examination when the writ petition is finally disposed of. Section 70 of the principal Act has been amended by which

the words "four years" in sub-section (1) have been substituted by "two years". The composition of the Cochin Devaswom Board has also been amended. By virtue of the statutory provisions as amended the petitioners cannot hold office, the legality of which has to be considered in the writ petition. We are informed that Special Commissioner has already taken charge. Under such circumstances, we find no infirmity in the order passed by the learned single judge. The appeal is therefore dismissed without expressing any opinion on the merits of the case.

Post the writ petition for early hearing.

Sd/-

K.S. RADHAKRISHNAN
Ag. Chief Justice

Sd/-
M.N. KRISHNAN
Judge

26/02/2007
en/

[true copy]